

September 17, 2010

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation
MM Docket No. 99-25 (LPFM Proceeding)

Dear Ms. Dortch:

The undersigned groups would like to express our concern about translator Auction 83 and its effect on low power radio availability, and request that the Commission refrain from acting at this time on Auction 83 other than as specified below.

On January 20, 2000, the FCC launched the low power FM service. Congress quickly limited the fledgling service, however, passing in December 2000 a broadcaster-sponsored appropriations rider. Broadcasters had claimed that new LPFM stations, using 100 watts of power, could cause calamitous interference to full power radio stations in their markets. Congress ordered the FCC to commission an independent study to verify the Commission's own earlier findings of non-interference. Therefore, although the FCC initially intended LPFM to be available in urban communities to help provide new media outlets and address declining diversity in media ownership, Congress's action effectively made LPFMs available only in rural areas and the service has never benefitted the urban populations it also was designed to serve.

When it acted in December 2000, Congress apparently was unaware that the FCC regularly distributes "translator" stations, authorized to operate at power levels up to 250 watts rather than just 100 watts, on 2nd and 3rd adjacent channels in the same city as full power stations. Rather than the blunt distance spacing method used for LPFMs, the FCC uses for translators a more sophisticated but related "contour" allocation method to prevent harmful interference in these scenarios. While waiting for further congressional action on LPFM, the FCC opened a filing window (Auction 83) for translators that would allow distribution of translator authorizations in the same markets in which Congress barred the Commission from distributing low power FM licenses. In essence, the FCC's translator window could distribute to translators – operating at higher powers, and on the very same spectrum – opportunities that Congress denied to LPFMs due to overstated and unfounded fears of harmful interference.

Further compounding this problem, some organizations chose to take advantage of the loose FCC rules in place at the time that the Auction 83 application window opened. One organization, for example, applied for over 2500 translators; another applicant, with an identical board of directors to the first organization's, applied for an additional 1600. Grant of this glut of translator applications in any significant number would preclude virtually all LPFM opportunities in a wide range of markets.

After granting “singleton” translator applications in rural areas, the FCC recognized the problems for LPFM service created by its Auction 83 rules, and chose to freeze processing of these translator applications where there was more than one applicant for the same frequency. This freeze has been in effect since Michael Powell was Chairman, as the FCC has tried to find ways to untangle the mess created by opening the translator window prior to allowing LPFM applicants a real opportunity to seek licenses in urban areas.

The FCC asked representatives of LPFM and translator organizations to work together to untangle the mess created in Auction 83. While the parties started far apart, they have made very significant progress in developing a plan together. They presented the plan to the FCC, detailed in the attached filing in docket 99-25 on July 10, 2010. FCC staff raised certain concerns about the viability of the plan, and the parties are working together diligently to create a second iteration of the plan which will address as many of the staff’s concerns as possible.

Similarly, Congress is on the verge of taking final action on long-awaited LPFM legislation, the Local Community Radio Act. The bill has passed the full House of Representatives and the Senate Commerce Committee on unanimous consent. LPFM advocates are working to resolve any remaining questions before final passage.

In light of this history and these recent developments, the undersigned organizations request that the FCC not take action on Auction 83 at least during the remainder of this Congress, or until the Local Community Radio Act passes, and until LPFM and translator advocates have an opportunity to submit further iterations of the proposed compromise that address FCC concerns. We understand that translator applicants have been waiting a long time for processing, but LPFM applicants have been waiting even longer for a proper opportunity to apply for a license in urban areas. Commission action at this point could be disruptive of the legislative process and make passage difficult in this legislative session.

We appreciate the Commission’s consideration of this request. For more information, please contact the Matt Wood of Media Access Project, counsel to the undersigned for this matter, at 202-232-4300.

Respectfully submitted,

Prometheus Radio Project
National Hispanic Media Coalition
Reclaim the Media
Future of Music Coalition
New America Foundation
Media Alliance
Center for Media Justice
Public Knowledge

The Transmission Project
People’s Production House
Access Humboldt
Free Press
Chicago Media Action
Common Frequency
Media Access Project